IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 22ND JANUARY 2007 / 2ND MAGHA 1928

MFA.No. 1031 of 2000()

OPMV.1364/1995 of MOTOR ACCIDENT CLAIMS TRIBUNAL, VADAKARA
OPMV.823/1993 of MOTOR ACCIDENT CLAIMS TRIBUNAL, KOZHIKODE
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APPELLANTS: /PETITIONERS 1 TO 7
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1. **KUNNOTH KULANGARA LEELA**
   W/O KUNHAPPA NAIR, AGED 60 YEARS
   CHERUVANNUR AMSOM AND DESOM
   (P.O) CHERUVANNUR (VIA) MEPPAYUR,
   KOZHIKODE DISTRICT

2. **SASI, S/O KUNHAPPA NAIR, AGED 30 YEARS**
   CHERUVANNUR AMSOM & DESOM
   (P.O) CHERUVANNUR (VIA) MEPPAYUR
   KOZHIKODE DISTRICT

3. **RADHA, D/O KUNHAPPA NAIRAGED 27 YEARS**
   CHERUVANNUR AMSOM & DESOM
   (P.O) CHERUVANNUR (VIA) MEPPAYUR
   KOZHIKODE DISTRICT

4. **PUSHPA D/O KUNHAPPA NAIR AGED 25 YEARS**
   CHERUVANNUR AMSOM & DESOM
   (P.O) CHERUVANNUR (VIA) MEPPAYUR
   KOZHIKODE DISTRICT

5. **HARIDASAN, S/O KUNHAPPA NAIR AGED 22 YEARS**
   CHERUVANNUR AMSOM & DESOM
   (P.O) CHERUVANNUR (VIA) MEPPAYUR
   KOZHIKODE DISTRICT

6. **GEETHA D/O KUNHAPPA NAIR, AGED 24 YEARS**
   CHERUVANNUR AMSOM & DESOM
   (P.O) CHERUVANNUR (VIA) MEPPAYUR
   KOZHIKODE DISTRICT

7. **SMITHA D/O KUNHAPPA NAIR, AGED 15 YEARS**
   CHERUVANNUR AMSOM & DESOM
   (P.O) CHERUVANNUR (VIA) MEPPAYUR
   KOZHIKODE DISTRICT (MINOR) REPRESENTED BY GUARDIAN AND MOTHER 1st APPELLANT LEELA

BY ADV. SRI.C.VALSALAN

RESPONDENTS:/RESPONDENT

1.T.K. HAMZA, S/OHASANKOYA HAJEE
THAZHEKIZHAKKAMBATHH HOUSE, KARANTHOOR
KOZHIKODE (R.C OWNER OF THE LORRY KL-11/A-6066)

2. KUNIYIL MOIDEENKUTTY, S/O ANDRUMAN
AGED 51 YEARS, KARUVANGAD, KOYILANDY
(DRIVER) D/L NO. 9169/67 BADAGE NO.1912/70
VALID UPTO 29-3-1994

3. KERALA STATE INSURANCE CO.DEPARTMENT,
KOZHIKODE (INSURER) POLICY NO.2745/91.KKD
CERTIFICATE NO.1255/91 VALID FROM 18-12-1991
TO 17-12-1992.

BY GOVERNMENT PLEADER BASANT BALAJI

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 22/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.S.RADHAKRISHNAN & M.N.KRISHNAN J.J

M.F.A. No.1031 OF 2000

Dated this the 22nd day of January 2007

JUDGMENT

Krishnan.J

This is an appeal preferred against the award of the Motor Accidents Claims Tribunal Vadakara in O.P (MV) 1364 of 1995 . One Kunhappan Nair aged 56 years died in a road accident. The Tribunal has awarded a total compensation of Rs. 1,38,000/- to the legal heirs. Aggrieved by that decision the claimants have come up in appeal. The third respondent has also entered appearance. Heard both sides. The learned counsel for the appellant would contend that the deceased was running a tea-shop and having a monthly income of Rs. 2,400/-. But the Tribunal has taken his annual income as Rs. 1,500/- It is also contended that the amount given under the head of love and affection is also grossly inadequate. It is seen from the award that the deceased was maintaining a family consisting of his wife and five children and was running a tea shop for a considerable length of time. We feel in the fitness of things the income can be fixed at Rs.2,000/- and compensation can be calculated . If it is done so after deducting $^1/_3$ for personal expenses the loss of dependency would come to Rs. 16,000/-

per annum and applying the multiplier of 8 the loss of dependency would be Rs. 1,28,000/-. The Tribunal has awarded Rs.96,000/- under that head . Therefore the claimant will be entitled to an additional compensation of Rs. 32,000/- under the head loss of dependency. So far as love and affection is concerned the compensation awarded is only Rs.5,000/- Out of the five children it is submitted that three of them are physically handicapped and it has caused considerable hardship to them. So we feel in the fitness of things Rs. 5,000/- shall be given as additional compensation towards loss of love and affection. We have perused the compensation awarded under other heads. They are only just and reasonable. Therefore the claimants would be entitled to an additional compensation of 37,000/-

2. In the result this M.F.A is partly allowed. The claimants are awarded additional compensation of Rs. 37,000/- with 7% interest from the date of the petition till realisation and the third respondent is directed to deposit the amount with a period of two months from the date of receipt of a copy of the judgment.

K.S.RADHAKRISHNAN,JUDGE

M.N.KRISHNAN JUDGE

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